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I-K-11

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04/07/03 09:56 AM

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Subject: to OMB: \* Responses to Federal Agency Comments--8-hr O3  
NAAQS Implementation Proposal--for 2:30 call today.

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----- Forwarded by John Silvasi/RTP/USEPA/US on 04/07/03 09:55 AM -----

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03/06/03 11:58 AM

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Subject: \* Responses to Federal Agency Comments--8-hr O3 NAAQS  
Implementation Proposal--for 2:30 call today.

Hi, Amy,

Here are the responses we can discuss with the federal agency commenters at our 2:30 call today.  
I presume that you'll provide them to the participants at your end.

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 DOE\_RESPONSES\_to\_omb.

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3/6/03

RESPONSES TO:

**Further comments on EPA's Proposed 8-hour Implementation Plan**

**FHWA Office of Natural and Human Environment**

Submitted 2/14/03

**COMMENT:**

EPA's draft fails to address an area that is very important to many States and localities. While we do not oppose the implementation plan including the revocation of the 1-hour standard, it has uncertain and undesirable consequences for the Congestion Mitigation and Air Quality Improvement (CMAQ) Program.

Authorized under title 23 of the United States Code, the CMAQ program has provided more than \$14 billion to States with nonattainment and maintenance areas to fund transportation improvement projects and programs that will reduce emissions. It is up for reauthorization at the end of FY 2003.

The CMAQ funding formula is statutory (see 23 USC 104(b)(2)). The formula apportions funds to States based on their nonattainment or maintenance status with respect to the 1-hour ozone and carbon monoxide standards and the number of people affected by the air pollution. As EPA revokes the 1-hour standard, the legal connection between the amount of CMAQ funding made available and the air quality need will be disrupted.

The classifications that EPA proposes for the 8-hour ozone standard will have no standing since the apportionment formula is explicitly tied to the 1-hour standard. The clear implication is that without a statutory change modifying the CMAQ apportionment formula, highly populous nonattainment areas will lose CMAQ funding.

As mentioned, we do not oppose the revocation of the 1-hour standard, but we feel that EPA needs to raise awareness about the impacts on the States' CMAQ funding by including such a discussion in its NPRM. It would be unfair to the American people to propose a rule based on an incomplete consideration of important factors. CMAQ funding is often cited as a critical funding element for metropolitan planning organizations.

In the longer term, a statutory change will be necessary under this proposed rule to amend the CMAQ formula. We find it likely that States and metropolitan areas, as well as DOT and EPA, would support such a change, and that Congress would follow suit to amend the formula when the time is ripe.

We have developed an apportionment formula for the CMAQ program that takes into account the 8-hour ozone and fine particulate matter standards. The proposal is currently a part of the reauthorization package. But note that FHWA's proposed formula does not take the implications of this rulemaking, specifically the revocation of the 1-hour standard, into account. We also do not believe that a legislative change to the CMAQ formula would be appropriate at this time

because the rule is still subject to change. A further change to the CMAQ apportionment formula should wait until EPA's regulation is final.

**RESPONSE:** Draft response (preamble text) has been drafted but is undergoing internal review.

3/6/03

RESPONSES TO: DOD comments

STATUS: Responses drafted for all comments

CAA SSC Comments on Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard

**Issue: What requirements for General Conformity should apply to the 8-hour ozone standard?**

**DOD COMMENT:**

**Applicability**

The General Conformity discussion is not complete. The draft rule needs to be revised to clarify that the discussion about when conformity applies to 8 hour ozone areas, the effect of the 1 year grace period, and how conformity applies for the 1 hour standard once the 1 hour standard is revoked, apply equally to both Transportation and General Conformity. Currently there is a good detailed discussion in Section V.C. where conformity is identified as one of the most significant issues in determining how to transition from the 1-hour to the 8-hour standard. The Transportation Conformity section, V.N., continues this detailed discussion but there is no mention of these important issues in the General Conformity section, nor is there any suggestion that they apply to General Conformity.

**RESPONSE** We would add a paragraph to the end of section "O," which addresses general conformity, discussing how the 1-year grace period applies to general conformity determinations.

**COMMENT:**

We recommend an introductory section that addresses these issues with respect to both types of conformity, followed by specific sections that describe requirements, timetables and issues unique to either Transportation or General Conformity.

**RESPONSE**

We would prefer to have the same relevant discussion in both the General Conformity and Transportation Conformity sections, rather than a separate introduction section that would precede both sections.

**COMMENT:**

**State SIP Budgets**

In our comments submitted to EPA in July 2002 in response to the posted issue papers, we requested that EPA provide direction to the states as to general conformity budgets and processes, such that states are able to develop their SIP budgets with appropriate adjustments for general conformity when revisions to the rule are finally proposed. The draft proposed rule to implement the 8-hour

ozone NAAQS, provides that:

"EPA recommends that state and local air quality agencies work with major facilities which are subject to the General conformity Regulations (e.g., commercial airports and large military bases) to establish an emission budget for those facilities in order to facilitate future conformity determination. Such a budget could be used by Federal agencies in determining conformity or identifying mitigation measures." Page 217.

We support EPA's recommendation to the States and strongly urge EPA to retain the proposed language in the published proposed rule.

**RESPONSE:** [none needed—expresses support for the provision]

**COMMENT:**

De Minimis Levels

The draft rule proposes to maintain the existing de minimis levels. However, these levels are based on the Subpart 2 nonattainment classifications and this section of the proposal does not address de minimis levels for Subpart 1 areas that EPA has not proposed to classify by severity.

We recommend that EPA adopt higher thresholds for the Subpart 1 areas.

**RESPONSE** Table 4, which lists the de minimis levels, has a category for "other nonattainment areas" that would cover subpart 1 areas. The de minimis level for both VOC's and NOx is 100 tons per year. That is the same as the de minimis levels for maintenance areas. We would revise the text to clarify that the de minimis levels for subpart 1 areas are included in the "Other Nonattainment" category listed in table 4, which sets the de minimis emission levels at 100 tons per year for both VOC's and NOx.

**Issue: How will EPA reconcile subparts 1 and 2?**

**COMMENT:**

The draft rule contains an option to combine subparts 1 and 2 based on the 1-hour and 8-hour design values. EPA goes on to describe options for classifying subpart 1 areas to include an interstate transport classification.

We support EPA's proposal to allow certain areas with lower design values to be designated under Subpart 1 rather than Subpart 2. We also support the transport classification but believe it should be extended to include intrastate areas as well.

**RESPONSE** Under the CAA, the State is the responsible party for developing the SIP for all areas within its boundaries. Thus, unlike the situation where pollution is transported between States, the State can fashion a SIP that addresses transport from one part of the State that affects

another part of the State. Therefore, EPA does not believe it needs to develop a separate policy or rule dealing with intra-state transport.

**Issue: How will EPA address long-range transport of ground-level ozone and its precursors when implementing the 8-hour ozone standard?**

**COMMENT:**

EPA acknowledges that legal and equity issues result when failure to control upwind sources of ozone and NO<sub>x</sub> creates a need for greater emissions reductions from local sources in order for a downwind area to achieve the ambient air quality standard. The draft rule cites EPA's intention to consider the issue of ozone transport in the context of a transport rulemaking being initiated to address the transport of PM<sub>2.5</sub> precursors, including NO<sub>x</sub>, since NO<sub>x</sub> affects ambient concentrations of both PM<sub>2.5</sub> and ozone. The draft rule goes on to describe the potential complication that downwind areas could still face if the upwind area's attainment date is later than the downwind area.

The transport rulemaking may prove beneficial to those downwind areas that are impacted by transport. However, these downwind areas will remain subject to sanctions unless they can be recognized as 'attainment but for transport' or classified as a subpart 1 nonattainment area due to transport. Leaving the State responsible for providing adequate emission reductions by the applicable attainment date does not do enough to protect these areas that cannot attain on their own. We recommend that the transport classification be included in the final rule.

**RESPONSE:** We do not see a legal mechanism for recognizing areas as "attainment but for transport" other than under provisions currently available in the CAA (i.e., for interstate nonattainment areas under section 182(j), and for international border areas under section 179B). Furthermore, we do not see a basis for classifying areas under subpart 1, rather than subpart 2, solely based on the supposition that the area is affected by transported ozone. The issue noted by DOD can be minimized by moving forward promptly to analyze residual ozone transport after the NO<sub>x</sub> SIP call and, if a residual interstate ozone transport problem is identified, address that problem as early as possible. Note that Clear Skies would assist by requiring further NO<sub>x</sub> reductions in 2008. As noted in responses to DOE comments, we are redrafting the proposal's discussion of how interstate transport will be addressed.

**Issue: How will EPA address transport of ground-level ozone and its precursors for rural nonattainment areas, multi-State nonattainment areas, areas affected by intrastate transport, and international transport?**

**COMMENT:**

We support the concept of the 'rural transport area' provision of Section 182(h) of the Act. However, we recommend that under the 8-hour ozone implementation rule, these rural transport areas be given an option regarding the implementation of the requirements of marginal ozone nonattainment areas. If

the area can demonstrate that the provisions would provide no improvement in 8-hour ozone concentrations in the rural transport area, the area should be allowed to opt out of the requirements. This is consistent with the discussion of the transport classification under subpart 1.

**RESPONSE:** We do not see a basis for saying that rural transport areas are not obligated to take the actions mandated under section 182(h) to the extent such an area is classified under subpart 2 and thus subject to that provision.

**COMMENT:**

The discussion of intrastate transport does not provide relief to the downwind, impacted areas. Encompassing upwind and downwind areas into large nonattainment areas would unfairly penalize the downwind areas. It is understood that each State is responsible for intrastate transport but in cases where a downwind area's attainment status is determined by transport, these areas must be given some relief from being 'bumped-up' to a higher classification or otherwise sanctioned for failure to attain. We recommend that the transport classification be included in the final rule.

**RESPONSE:** See previous response on intrastate transport. Because the CAA gives the State primary responsibility in developing the SIP for all its attainment and nonattainment areas, the State is responsible for deciding whether an upwind area would need to implement certain controls earlier to help a downwind area in the State attain earlier so it would not have to be bumped up if it fails to attain due to emissions from the upwind area in the State. The Act does not provide other relief from the attainment date structure, especially for nonattainment areas classified under subpart 2.

**Issue: How should the NSR Program be implemented under the 8-hour ozone NAAQS?**

**COMMENT:**

EPA is proposing to amend both the NSR and PSD regulations to expressly include NO<sub>x</sub> as an ozone precursor in major PSD and major nonattainment NSR programs. EPA is also proposing a transitional NSR option for areas expected to attain the 8-hour standard within 3 years as well as transport areas.

We support EPA's plan to include NO<sub>x</sub> as an ozone precursor in both the PSD and NSR programs. We also support the transitional NSR option with the 100-ton per year major source threshold, the requirement for BACT in lieu of LAER and relief from the emission offset requirements.

**RESPONSE:** [none needed—comment expresses support]

3/6/03

RESPONSES TO: EPA's Proposed Rule to Implement the 8-hour Ozone NAAQS  
FHWA Office of Natural and Human Environment Comments

**FHWA COMMENT:**

**Clarification of source of comments:** FHWA staff received two documents related to the EPA proposed rule to implement the 8-hour ozone NAAQS. A proposed rule dated December 26, 2002 was transmitted to FHWA on January 24, 2002 by the Office of Management and Budget (OMB) and received on January 26, 2002. A document dated January 17, 2002 containing new sections V.C. "How will EPA transition from the 1-hour to the 8-hour standard?" and "V.D. What obligations will remain applicable requirements under the mechanism selected for transitioning from the 1-hour to the 8-hour standard?" was transmitted to FHWA by OMB on February 5 and received on February 7, 2002. Based on the language in the January 17, 2003 document, it would appear interim changes were made to the December 26, 2002 document however; FHWA staff have not reviewed any other versions of the proposal. The comments are based on a review of the two documents reviewed by FHWA and except where otherwise noted, are based on the December 26, 2002 version of the document. The discussion of topics correlates with the order of first occurrence in the proposal and does not reflect order of significance to FHWA.

**RESPONSE:** [None needed—merely a clarification from FHWA]

**FHWA COMMENT:** Attainment Dates (Section V.B.)

Section V.B.6. describes an incentive feature. Notwithstanding the "expeditiously as possible" requirement - areas designated under subpart 1 would seemingly have better air quality than areas designated under subpart 2. Subpart 1 areas have longer (5 years) to demonstrate attainment than do areas designated marginal under subpart 2 or a moderate area under subpart 2 opting for the incentive feature – each of these would have 3 years to demonstrate attainment. This seems counter intuitive – both in terms of achieving the NAAQS and improving air quality in an expeditious manner.

**RESPONSE**

- EPA senior management's preference is for the classification option in which some areas are placed in subpart 1, since it provides regulatory relief to many areas.
- Subpart 1's attainment dates are as expeditious as practicable but no later than 5 years after designation. Thus, we believe that many areas classified under subpart 1 will have attainment dates similar to areas classified as marginal under subpart 2.

**FHWA COMMENT:** Revocation of the 1-hour Rule (Section V.C. How will EPA transition from the 1-hour to the 8-hour standard? 1/17/03 draft)

In Section V.C.3., EPA is soliciting comment on the alternative of "retaining the 1-hour standard itself (and the associated designations and classifications), at least for certain purposes, for a longer period of time after designations for the 8-hour ozone standard as a means to prevent air quality from degrading."



- FHWA recommends repeating or incorporating the language in V.C.2.a. and V.C.2.b. that indicates transportation conformity would not apply to the 1-hour standard to section V.C.3.

**RESPONSE:** Anti-backsliding & transition section being redrafted.

**FHWA COMMENT:** Anti Backsliding Provisions (Section V.D. What obligations will remain applicable requirements under the mechanism selected for transitioning from the 1-hour to the 8-hour standard? 1/17/03 draft)

Section V.D. begins discussing CAA's anti-backsliding provisions regarding current CAA requirements under the 1-hour ozone standard. Section V.D.1. discusses control obligations in maintenance plans. EPA proposes that certain components of the maintenance plan obligation would no longer apply once the 1-hour standard is revoked, including the requirement to demonstrate conformity to the budget in the approved maintenance plan. However, in section V.D.2.a., the document states "States could submit SIP revisions, if needed, to eliminate these obligations under the 1-hour maintenance plan."

- Does this final statement regarding SIP revisions apply to transportation conformity? Will 1-hour maintenance areas have to amend their SIPs before 1-hour conformity is no longer required? If not, we recommend that this should be clearly stated. If maintenance SIPs will need to be revised, then we recommend that EPA detail this further throughout the proposal, especially in the transportation conformity section of the proposal.

**RESPONSE:** Anti-backsliding & transition sections being redrafted. We plan to propose that conformity would not apply under the 1-hour standard after the 1-hour standard is revoked. This would be matter of law, so SIP revisions would not be required.

**FHWA COMMENT:**

- In areas not designated [nonattainment?] under the 8-hour standard that have TCMs in their 1-hour SIP it unclear who would be responsible for the timely implementation of said TCMs under the proposed revocation and anti-backsliding provisions.

**RESPONSE:** We're not sure we understand the comment. The party identified in the SIP as responsible for implementation of a TCM would remain responsible under antibacksliding. *Perhaps we need to simply add text to clarify this.* If areas are nonattainment for the 8-hour standard, after the 1-hour standard is revoked, the conformity obligation relating to timely implementation will no longer apply.

**FHWA COMMENT:** NOx Provisions (Section V.M. How will the section 182(f) NOx provisions be handled under the 8-hour ozone standard?)

Section V.M.10 (What impact will the implementation of the 8-hour ozone standard have on a State's Transportation Conformity SIP?) should reference the transportation conformity regulations, not the general conformity regulations.

**RESPONSE:** Erroneous reference has been corrected in the working draft.

**FHWA COMMENT: Transportation Conformity (Section V.N. What requirements for transportation conformity should apply under the 8-hour standard?)**

In previous communications, EPA staff indicated if an area designated nonattainment under the 8-hour rule had the same geographic boundary as the previously existing 1-hour nonattainment or maintenance area, then the area would not be required to make a new conformity determination at the end of the one year grace period. EPA indicated they intended to a separate conformity proposal for the new standards that would allow areas to use the 1-hour budget test to demonstrate conformity for the 8-hour standard, if the nonattainment area stays the same size. FHWA supports this approach and encourages EPA to complete this rule prior to area designations as indicated in V.N.3.

**RESPONSE:** We are planning to do a separate conformity rule before designations. I understand that we do plan to propose that areas with same geographic size can use their 1-hr budgets. We'll consider any suggested language to clarify. It is an open issue whether we need to make new determinations for the 8-hour standard based on the 1-hour budget.

**FHWA COMMENTS ON: New Source Review – Clean Air Development Communities (Section V.P. How should the NSR Program be implemented under the 8-hour ozone NAAQS? especially section V.P.8. NSR Option to Encourage Development Patterns that Reduce Overall Emissions – Clean Air Development Communities).**

**FHWA COMMENT:** FHWA is extremely concerned about the language proposed in Section V.P.8. related to Clean Air Development Communities. Existing regulations under 23 CFR 450.300 Subpart C – Metropolitan Transportation Planning and Programming require MPOs to consider (among a list of other planning elements) land use and transportation planning interactions in their planning processes, plans, and transportation improvement programs. Since this section discusses an areas transportation system and land use/development interactions and has a direct impact on the highway program, **FHWA requests more time to review this section in a more thorough manner and will provide additional comments.**

**RESPONSE:** A revised version of the CADC section has been prepared and will be provided by end of week (3/7/03). We would request comments on this the following week (Wed?).

Some initial comments include the following:

**FHWA COMMENT:**

- Although part of the New Source Review section of the proposal, this section deals substantially with on-road motor vehicle travel and emissions. For this reason, comments should be solicited and carefully considered from transportation stakeholders including State departments of transportation and metropolitan planning organizations. However, because of the length of the proposal, and the location of this option as a subsection on NSR, transportation reviewers may miss this provision. We recommend that the this section be more clearly highlighted by at least revising the title to include “on-road emissions.”

**RESPONSE:** To address the concern, we could develop a table that we send out as part of the communications that points people with specialized interests to the appropriate sections.

**FHWA COMMENT:**

- EPA acknowledges that many of these developments, including brownfield revitalizations, will impact different emissions sources, including mobile sources. However, EPA is proposing to limit the emissions benefits generated by initiatives associated with CADC to new source review. FHWA suggests that if a “pool” or “banks” of offsets were to be established, they should be applicable to all sources, including mobile sources, but not just limited to point source.

**RESPONSE:** We recognize that offsets could be used for other purposes; I believe the text is being modified to reflect this.

**FHWA COMMENT:**

- FHWA encourages EPA to recognize that highways have varying land use patterns associated with them, and not all of the development patterns surrounding necessarily consume large amount of land or have agricultural or environmental impacts. For example, a properly designed and mitigated highway can have little or no impact on the environment, and with appropriate access controls, may have a limited impact on development patterns. The language in this proposal leans towards equating all highways with sprawl. There is much more to development patterns than transportation, and EPA should recognize other influences, including housing costs, land rent theory, public infrastructure provisions, crime rate, perceived quality of schools, and personal preference to where people want to live.

**RESPONSE:** Still considering this comment.

**FHWA COMMENT:**

- Section V.P.8.c. states, “areas that chose to pursue these NSR flexibilities would not be able to include the effects of land use in their motor vehicle emissions budgets in the SIP, or in the area’s transportation conformity determinations.” Because this would directly impact transportation conformity, the transportation conformity section of the proposal should also reference this option.

**RESPONSE:** We plan to add appropriate cross-references.

**FHWA COMMENT:**

- Section V.P.8.d. states, “It may be very complicated for areas to avoid double-counting.” Although proposal recognizes that land use choices are often not explicitly quantified and are actually part of the overall population and employment allocation in the travel demand model, the proposal does not go on to propose how double counting could be avoided. It is recommended that EPA revise this section to require that States would have to work with metropolitan planning organizations to determine if the land use activities would be reflected as land use assumptions per “Improving Air Quality Through Land Use Activities.” If so, it may be impossible to separate out the effects of these measures, and still accurately model travel activity and motor

vehicle emissions. It should also reference the EPA publication “Comparing Methodologies to Assess Transportation and Air Quality Impacts of Brownfield’s and Infill Development.” In particular, it should note that a methodology that assumes the growth would have gone to a single Greenfield site should not be used in SIP development. The proposal is counter to existing state of the practice related to travel demand modeling and would place additional requirements on MPOs.

**RESPONSE:** We’re considering these comments in the CADC section, which is being redrafted.

**FHWA COMMENT:**

- In section V.P.8.e., the proposal states that a “CADC does not have to be, and in most cases probably would not be an entire metropolitan area covered by a SIP.” This seems to fly in the face of both regional air quality and transportation planning. How could one separate out the VMT? What if VMT is reduced in the CADC, but that actually has causes an increase in VMT regionally? We recommend that this provision be deleted from the option, or at least clarify that even if a smaller CADC was designated, any analysis would have to reflect and consider effects on the nonattainment area as a whole.

**RESPONSE:** Change has been made to working draft to clarify.

**FHWA COMMENT:**

- In section V.P.8.f., the proposal states, “In areas where the development is characterized as spread out, low density, and auto-dependent, air pollution from mobile sources tends to increase because of the increased number of mile an individual has to travel for each trip. However, if areas adopt development practices that decrease VMT, automobile and truck emissions would be reduced. The impact of VMT on air quality has long been recognized as significant.” This is very simplistic, and somewhat misleading. First, because of population and economic growth, there are really no development practices that “decrease VMT.” Some may decrease the rate of growth of VMT or hold the per capita VMT constant, but total VMT will continue to increase. Second, on-road emissions have decreased at the same time as VMT as increased, so any effect is really a relative effect between alternatives. Although in many places on-road sources are a substantial part of the emission inventory, growing VMT has not been a significant factor. In fact, the percentage of total emissions that come from on-road sources has decreased. Depending on the nature of the development and the region’s planned transportation system, as well as many other factors, motor vehicle travel may not grow as fast as it would have had the land use strategies not been implemented. In this case, future motor vehicle emissions may also be lower than expected prior to the implementation of the land use strategies.” And finally, there is no mention of the role of jobs housing balance, affordable housing relative to the new economic opportunity (job wage rate), impacts of two or more wage earners in the same household with different job opportunities or locations, etc.

**RESPONSE:** Still trying to determine how to address this.

**FHWA COMMENT:**

- In section V.P.8.g., the proposal begins a discussion on “What is the connection between land development and NSR?” Although this is not a methodology section, its examples seem to follow a methodology that assumes the growth would have gone to a single Greenfield site. As mentioned above, EPA’s “Comparing Methodologies to Assess Transportation and Air Quality Impacts of Brownfield’s and Infill Development” states that this methodology should not be used in SIP development. Therefore, the proposal should clearly state that these examples are hypothetical, and that analysis that is more detailed would be required to ensure that regional emissions would actually be reduced. The use of the word “will” in the second paragraph (the source “will” be able to take advantage of existing infrastructure in a developed area and existing developed areas will result in reduced VMT) should be replaced with “may”. Some industries have additional requirements not served by the existing or aging infrastructure and due to other factors mentioned in these comments the resulting VMT may or may not be reduced.

**RESPONSE:** Changes being made to accommodate.

**FHWA COMMENT:**

- In section V.P.8.h., the proposal states, “low density development patterns tend to disturb more land and create more impervious cover over a region (e.g., paved roads), harming a region’s water quality and disrupting habitat.” While low-density areas may have a larger percentage of impervious surfaces attributed to paved roads, the total percentage of impervious surfaces may be lower than a densely developed area. The relative percentage of distribution of impervious surfaces in densely developed areas attributed to highways may be lower, but the total impervious surface area may be higher than low density areas.

**RESPONSE:** Would need to understand comment better in discussion.

**FHWA COMMENT:**

- Section V.P.8.i. includes a sample list of land use activities that may improve air quality. A more comprehensive discussion of the strategies is provided in a guidance document. Consistent with the majority of the proposal these could be included by reference. Some of the proposed strategies implemented out of context may actually increase vehicle emissions and or unintentionally promote sprawl – while others may require and/or suggest changes to federal lending programs, property acquisition policies, and so forth.

**RESPONSE:** We will more formally incorporate the guidance by reference.

**FHWA COMMENT:**

- Section V.P.8.m. indicates that this proposal states that land use decisions would remain local. Section V.P.8.n. goes onto state that the CADDC could not be changed without a SIP amendment. This clearly places federal agencies in a position to make land use decisions contrary to existing laws and regulations that explicitly prohibit such actions.

**RESPONSE:** We could add a few sentences saying that changes to the CADC would require local governments to offset the emissions in some other way or they would lose the advantages of the CADC. Section 131 of the CAA preserves local authority over land use. The rule would clarify that it's their choice, but they wouldn't be able to obtain the advantages of the proposal unless they do it through the SIP.

**FHWA COMMENT:**

- Section V.P.8.o. fails to identify the range of disadvantages to land use planning.

**RESPONSE:** Are there suggestions on how to do this? References?

**FHWA COMMENT:**

**PM 2.5 (Section V.Q. How will EPA ensure that the 8-hour ozone standard will be implemented in a way which allows an optimal mix of controls for ozone, PM2.5, and regional haze?)**

Section V.Q. discusses PM2.5 nonattainment areas extensively. The PM 2.5 rule has not yet been promulgated. FHWA cannot adequately evaluate this section absent a draft proposal for the PM 2.5 rule.

**RESPONSE:** The PM2.5 implementation approach will not be proposed until fall 2003. EPA has negotiated a settlement agreement to designate 8-hr O3 NAAQS nonattainment areas by 4/15/04. We have asked that States provide recommendations for nonattainment areas and boundaries by 7/15/03. States would like to have as much time as possible to review the proposed rule prior to their providing recommendations. (They would have preferred to have the *final* rule prior to making recommendations, but that was not possible in the settlement agreement.) And, we need to have the final rule out several months *before* we have to publish the final designations. Therefore, we cannot hold the 8-hr O3 NAAQS implementation rule. There is a meeting scheduled for OMB and the federal agency reps on 3/12/03 to review early thinking on implementation of the PM2.5 NAAQS. Perhaps at that meeting, we can discuss specific concerns. Also, EPA plans to implement PM 2.5 under the flexible subpart 1 provisions. States would have the opportunity to harmonize their ozone and PM plans because designation dates for ozone and PM are both in 2004.

**FHWA COMMENTS ON: Early Action Compacts (Section VII. Other Considerations)**

**FHWA COMMENT:**

- Early Action Compacts are allowed in areas "designated attainment and 'clean' for the 1-hour ozone standard, i.e., no monitored violations." We recommend that the proposal clearly state that 1-hour maintenance areas are eligible for Early Action Compacts.
- When will the 1-hour standard be revoked for areas with Early Action Compacts? The primary option in the proposal is to revoke the 1-hour standard one-year after the effective date of the 8-hour designations. However, under Early Action Compacts, the effective date would be deferred. Therefore, the document should discuss how the 1-hour standard would be revoked in areas with Early Action Compacts.
- In section VII.A.3, the third paragraph is a very confusing. It states "As a result, EPA plans to propose to defer the effective date of the nonattainment designation for these

areas contingent upon each participating area's meeting all remaining terms and milestones of the agreement. However, while the Agency cannot prejudge the 2004 designations process, States are advised that if a compact area is determined to be part of an area that is designated nonattainment for the 8-hour standard, its nonattainment designation would not be deferred." What does this mean? Is this saying that even if an area meets all of the compact protocol requirements, EPA may designate it nonattainment anyway? It is recommended that this section be revised to clearly state EPA's intent and the risks involved with Early Action Compacts.

**RESPONSE:** Revised language has been incorporated into working draft.

### **Other Comments**

#### **FHWA COMMENT:**

The proposed rule references forthcoming rules for transport, PM2.5, and transportation conformity. FHWA continues to be interested in the anticipated timelines for each of these outstanding issues.

**RESPONSE:** A meeting has been set up for 3/12/03 to discuss the relationship between implementation of the 8-hour ozone and PM2.5 standards. My understanding is that the PM2.5 implementation rule will be proposed in fall 2003. My understanding is that the transportation conformity rule to address the 8-hr O3 NAAQS is anticipated to be proposed when EPA has a clearer idea of which implementation options it plans to pursue (after we receive comments on the proposal of the implementation rule for the 8-hr standard).

#### **FHWA COMMENT:**

The proposed rule references several supporting documents that have not been provided. This analysis has been conducted without consideration of any supporting materials.

**RESPONSE:** The supplemental document that discusses options EPA considered but is not proposing has been sent to OMB. Are there other supporting documents that you have not yet seen?

#### **FHWA COMMENT:**

Appendix IX Summary of Today's Proposal – the December 26, 2002 version incorrectly stated the RFF percentage at 18 instead of 15 percent.

**RESPONSE:** This is not an error—18 percent was intended in the context. The proposal is that the post-15% period would have to obtain the requirement of 3%/year emission reductions over the first 6 year period.

3/6/03

RESPONSES TO: Comments from DOE (to be sent to OMB)

STATUS:

- Notes in *italics* indicate changes that have not been made.

General.

1. Just received the material sent the afternoon of 2/13 and have not reviewed.

**RESPONSE:** This includes the supplemental document that describes options that EPA considered but is not proposing.

2. The lack of an accompanying PM2.5 implementation makes it difficult to evaluate the 8-hr O3 strategy as a stand-alone strategy, since the coordination of the 2 (and less importantly with the regional haze strategy) is essential to provide maximum certainty and efficiency to the regulated community. It is just this certainty/coordination that Clear Skies would provide. An adequate evaluation of this draft NoPR requires at least a simultaneous evaluation of EPA's putative PM2.5 scheme.

**RESPONSE:** There will be a call with OMB/Federal Agency reps on 3/12 to discuss the relationship between implementation of the 8-hour ozone and PM2.5 NAAQS. The PM2.5 implementation approach will not be proposed until fall 2003. EPA has negotiated a settlement agreement to designate 8-hr O3 NAAQS nonattainment areas by 4/15/04. We have asked that States provide recommendations for nonattainment areas and boundaries by 7/15/03. States would like to have as much time as possible to review the proposed rule prior to their providing recommendations. (They would have preferred to have the *final* rule prior to making recommendations, but that was not possible.) And, States are urging EPA to have the final rule out several months *before* we have to publish the final designations. Therefore, we cannot hold the proposed 8-hr O3 NAAQS implementation rule until we develop and issue the proposed PM2.5 rule.

3. The scheme preferred, with all its "suboptions" and possible variations--some only mentioned as "requesting comment on" without any real discussion-- are so complex that it is difficult to evaluate the entire scheme without a *flowchart*. Such a visual would aid interagency review, and would likely suggest a clearer way to present the proposal.

**RESPONSE:** We are considering the feasibility of drafting such a flowchart.

4. The complexity of the preferred classification scheme contradicts the goal of providing states with certain direction prior to designations.

**RESPONSE:** We will make available at the time of proposal a list of areas and how they would be affected by the classification schemes.

5. Transport issues necessarily permeate the text, and require further review.

**RESPONSE:** We need clarification regarding the concern.

6. The detailed description of (proposed for comment ??) Clean Air Development Communities



in this notice adds to the confusion. Is CADC better in a stand-alone notice for comment, especially since EPA is going forward with it in specific cases ?

**RESPONSE:** We want to move ahead with proposing the CADC concept in this proposal.

### Specific

Pg 1, SUMMARY, 3rd sent. With so many options/suboptions, the proposed rule/preamble does not provide certainty prior to issuance of the final rule. Shouldn't this say something like "The effect of the proposed rule is to provide direction to States in developing federally approvable SIPs to implement the 8-hr std."

**RESPONSE:** The proposed rule is not intended to provide certainty as it merely lays out options on many issues so that EPA can hear from the public before developing an implementation strategy. The final implementation strategy will provide the necessary certainty.

Pg 2, parenthetical "5)": This will have to be consistent with whatever is agreed to on "softening" the transport issue in general.

**RESPONSE:** As noted above, Jeff Holmstead (AA for Air and Radiation) is personally redrafting the transport section.

Pg 13, 1st para, and Appendix A: Strike the paragraph and Appendix A as gratuitous, pre-decisional, irrelevant to the NoPR. This is, after all, an implementing strategy for a standard set in 1997, not a strategy for whatever NAAQS is concluded in the next round of O3 review, during which these studies will presumably be considered. The ozone NAAQS review is going on now, with a 1st draft of the criteria document not expected until at least Summer 2003 (after the proposed strategy); the CD review will not be completed before August 2004-- well after the 8-hr O3 strategy is finalized and designations are made for the 8-hr std.

**RESPONSE:** Changes have been made in the working draft of the notice, to remove the Appendix and the discussion of it in the preamble.

pg 22, 1st para: I understand that new "softened" text on regional transport is forthcoming. (See above) paragraph and the following section "D" will need to be reviewed after this "softened" text is presented.

**RESPONSE:** This language will be revised.

Pg 27, section B: The following section is weak. It gives technical background for the original implementation approach and then only for the transport provisions [going back to OTAG, for goshsakes] This could be handled with just a brief mention of OTAG and then using just the NOx SIP call (which indeed cites OTAG) to provide technical support. May wish to consider more technical discussion of local vs. regional controls.

[Note: this section is "B. What is the technical background of EPA's implementation approach?" in the intro section of the preamble, before the proposal actually begins. ]

**RESPONSE:** This section has been redrafted in the working draft of the proposal to make clear that it is not a technical justification, but rather a brief history of the development of our

knowledge base.

Pg 39 and following, both options: Has EPA done any statistical evaluation relative to the different "forms" of the 1-hr and the 8-hr std, and how the proposed translation (x% above the level, regardless of form) is appropriate? Or with using "design value," is this irrelevant?

**RESPONSE:** The supplemental document that discusses other options EPA considered, which was recently provided to you, does have a discussion of this.

Pg 47, 1st full para, 1st sent: Do you mean to say the one-hour design value at the time of the 8-hr designation? It doesn't make sense as stated.

**RESPONSE:** This has been corrected in working draft.

Pg 51, subsection (ii): Caution here: Is this section in effect announcing (sort of an ANPR) a PM2.5 implementation strategy without having a complete interagency review of that strategy? While the "transport" classification and associated possible flexibility may be appropriate, using EPA's internal consideration of options for a possible PM2.5 strategy to support this option may not be.

**RESPONSE:** This has been modified to avoid mention of PM2.5 without changing substance of proposal.

Pg 52 and following text related to subsection "5.": The discussion of the placement in, and treatment of, "gap" areas is very unclear, and does not (generally) provide the necessary strong rationale to support the imposition of some subpart 2 prescriptions to these areas.

**RESPONSE:** This section has been redrafted to make clear that it is not intended to provide a rationale for the imposition of the subpart 2 prescriptions, but to justify why EPA is proposing to place all gap areas into subpart 1.

Pg 54, last sentence: May better be said "... is one alternative to unnecessarily imposing new local controls."

**RESPONSE:** Language has been revised along the lines suggested.

Pg 57, 1st para: The request for comments on equitable treatment of "gap" and non-gap areas is indicative of the weak presentation of rationale for the approach proposed. If the approach survives to proposal, this will need work.

**RESPONSE:** We're not sure what the concern is here and will need to discuss.

Pg 57 and following (subsection "6"): The "incentive feature" and its usefulness are difficult to evaluate without a clear understanding of how all the prescriptions of Subpart 2 (with the many adaptations discussed throughout the preamble) would be imposed on an area choosing to go that route.

**RESPONSE:** We're open to suggestions as to how to make this section clearer. Also, DOE has suggestion a flow chart, which may be helpful.

Pg 70 and following: The discussion of transitioning from the 1-hr to the 8-hr std is unclear, compounded by discussions of conformity, anti-backsliding, and options on "applicable

requirements," etc.

**RESPONSE:** The entire transition and anti-backsliding section is being re-worked.

Pg 89-90: What is the real effect each of the options? Is one preferred, and why?

**RESPONSE:** As noted, the entire anti-backsliding section is being redrafted.

Pg 102 and following, and throughout: Is it disingenuous for the agency to minimize/project the impact of any particular option by using its own, unspecified definition of nonattainment "areas" as they are effected by a certain option--EPA staff has acknowledged that they use wider areas than some states have proposed.

**RESPONSE:** We plan to clarify how we developed the list of the hypothetical nonattainment areas.

Pg 107, 1st sent: Some text is missing ? typo? Should "year" be "area?"

**RESPONSE:** Correction has been made in working draft.

Pg 108 and following: The statements on what EPA will do before December 2003 regarding transport and the 8-hr std I assume are to be softened, per earlier political meeting.

**RESPONSE:** Revised language may be needed here consistent with the broader revisions we are making regarding transport.

Pg 144 and following: The 2006 deadline for ROP plans for moderate areas will not necessarily permit coordination of these with the RFP plans for PM2.5, which would be due with the first SIP (3 yrs after designation). See general comments.

**RESPONSE:** We can discuss this at 3/12/ meeting on the integration of 8-hr O3 and PM2.5 implementation.

Pg 147: Might be helpful to mention credit-ability of title 3 HAPs reductions of VOCs?

**RESPONSE:** Revised language has been incorporated into working draft of notice.

Pg 154 and following: Imposing the greater than RFP burden on upwind nonattainment areas, without any section 126 proceeding/finding, is suspect. Can this just be accomplished by stating the general duty in section 110 to prevent significant contribution downwind? Where all the same state, the general duty to demonstrate attainment should suffice.

**RESPONSE:** We intended the proposal to only apply in cases where EPA had already made a determination under the CAA of significant contribution. The text has been revised in the working draft to help address the concerns.

Pg 170 and following: Good that previous RACT SIP will be accepted.

**RESPONSE:**